IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 589 of 2007()

CMP.295/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, THALASSERY

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PETITIONER: PETITIONER

ACHUTHA RAJ, S/O. NARAYANAN RAJ,
VICE CHAIRMAN, INDALARADA GRAMA PANCHAYAT,
CHIKKAVASE HALLI, ANAKAL TALUK, BANGALORE-18.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: RESPONDENT

STATE OF KERALA,
(S.H.O., THALASSERY POLICE STATION),
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.589 of 2007

Dated this the 12th day of March, 2007

ORDER

The petitioner is aggrieved by a condition imposed by the learned Magistrate in an order passed in his favour under Section 451 Cr.P.C. He prays that condition No.ii may be modified or altered.

2. A brief reference to the relevant facts appear to be necessary. The dispute is about a vehicle, which is a car (Qualis). One Vasantha is the registered owner of the said vehicle. The 1st accused one Vijesh has allegedly purchased the vehicle from the said Vasantha. The transfer has not been reported to the authorities and the transfer has not been endorsed in the registration certificate. As per the records in the Motor Vehicles Department, the 1st accused has not got the vehicle transferred to his name. He allegedly handed over the registration certificate of the vehicle to the petitioner. The petitioner is a bona fide purchaser. He believed that 1st accused is the owner and that the registration certificate handed over to him is true and genuine. Actually the real registration certificate was pledged with some financier. A fake registration certificate was handed over to the petitioner. Accused No.1 was arrested in some other crime. It came to be known that the registration certificate which the 1st accused had handed over to the petitioner is not real and genuine.

The petitioner applied for release of the vehicle and the learned Magistrate directed release of the vehicle subject to conditions. Condition No.i obliges the petitioner to execute a bond for Rs.5 lakhs with two solvent sureties each for the like sum. Condition No.ii directs the petitioner to produce the registration certificate and the connected records before the court. Condition No.3 obliges the petitioner to produce the vehicle before court as and when he is directed to do so.

3. The petitioner is aggrieved by condition No.ii. He submits that the registration certificate etc. have already been seized by the police. He cannot produce them all over again. The police may be directed to produce the documents seized before the learned Magistrate. The petitioner shall comply with both the other conditions imposed. In these circumstances, condition No.ii may be deleted and the vehicle may be ordered to release to the petitioner.

4. There is no other claimant for the vehicle. Admittedly the vehicle has been seized from the possession of the petitioner. Even going by the prosecution version, the petitioner is the person entitled to the possession of the vehicle as the original owner Vasantha had transferred the vehicle to the 1st accused and the 1st accused had transferred the vehicle to the petitioner herein. The person with whom the original registration certificate has allegedly been produced

to raise finances has not appeared before the Court as a claimant. The seizure was effected as early as on 20.12.2006. I must remind myself of the decision of the Supreme Court in **Sunder bhai Ambalal Desai v. State of Gujarat** [A.I.R (2003) S.C 638]. The vehicle is now being exposed to sun and rain. It was seized from the possession of the petitioner. To ensure that there is no unnecessary loss to the vehicle, it has got to be entrusted to someone who will take care of the vehicle. In the absence of any other claimant, I am of opinion that the petitioner is the best person entitled to keep the possession of the vehicle and save the same from unnecessary deterioration and damage. Sufficient safeguards have already been insisted by the learned Magistrate by insisting on execution of a bond for Rs.5 lakhs with two solvent sureties each for the like sum. The petitioner cannot produce the registration certificate as the same have already been admittedly seized by the Investigating Officer. In these circumstances, I am satisfied that the said condition No.ii can be deleted.

5. In the result, this Crl.M.C is, allowed. The said condition No.ii shall stand deleted.

(R.BASANT, JUDGE)

rtr/-